

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Promoting human rights by protecting those who defend them

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Dear President, Prime Minister and Chief Minister,

Re: Pakistan's duty to investigate and remedy the Murder of Bilal Anwar Kasi and those killed in Sandeman Civil Hospital Quetta bomb attack on 8 August 2016.

Lawyers' Rights Watch Canada (LRWC) is a committee of lawyers and other human rights defenders who promote human rights and the rule of law internationally through advocacy, legal research and education LRWC also campaigns for lawyers and other human rights defenders in danger because of their advocacy. LRWC has Special Consultative status with the Economic and Social Council of the United Nations.

LRWC condemns in the strongest terms the two separate attacks targeting the Balochistan legal community on 8 August 2016 in Quetta: the assassination of Bilal Anwar Kasi and the subsequent bombing of the emergency ward area of the Sandeman Civil Hospital that left over 70 people the majority of whom were lawyers dead and over 100 injured. The fact that the numbers of people killed and injured is still unknown four months after the tragedy is of great concern. Bilal Anwar Kasi, a prominent lawyer and president of the Balochistan High Court Bar Association, was in his car enroute to his office when he was shot by two motorcycle riding gunmen on the morning of 8 August. Prior to his death he had announced a two-day boycott of

court to protest the recent murders of lawyers in Quetta.¹ Many lawyers, journalists, and friends had gathered at Sandeman Civil Hospital in Quetta to accompany the body of Bilal Anwar Kasi when the bombs went off. According to one estimate, 78 people including 57 lawyers were killed, and 120 others injured.² Many of the lawyers killed were advocates for victims of enforced disappearances in Balochistan. The assassination and bombing are believed to have been pre-meditated and well planned attacks on the legal community of Balochistan.³ The bombing has wiped out a generation of Quetta's lawyers, a loss that cannot be replaced. A loss of lawyers of this magnitude in a single day has left a void in the legal community in Balochistan.

Background:

Across Pakistan there has been outrage and condemnation about the murder of Bilal Anwar Kasi and the lawyers and others killed in the 8 August 2016 bombing at the Sandeman Civil Hospital. Reports indicate that lawyers assisted victims in the aftermath of the bombing, taking the place of police and public authorities who did not arrive on the scene until half an hour after the attack. The day after the attacks lawyers announced a boycott of court proceedings.⁴ The Pakistan Bar Council initially gave the Balochistan and Pakistan governments until 19 August to arrest suspected perpetrators and mounted a protest in front of parliament when that deadline had passed.⁵ Lawyers boycotted court proceedings for seven weeks following 8 August to protest government failure to identify, apprehend and prosecute suspected perpetrators and vowed to continue to protest until those responsible are apprehended.⁶

On 22 September, a judicial commission of inquiry headed by a senior judge of the Balochistan High Court was formed to investigate the 8 August 2016 attacks.⁷ This commission of inquiry was replaced after counsel for victims expressed lack of confidence in the investigation team and accused the team of shielding suspects.⁸ A second commission of inquiry, headed by Justice Qazi Faez Isa was then appointed by the Supreme Court and given 30 days to complete the investigation. However this investigation appears to have stalled and be mired in controversy. Justice Qazi Faez Isa has claimed that the Balochistan government has no interest in solving this

¹ *Quetta Hospital Bombing: Pakistan lawyers strike in protest*, BBC News, 9 August 2016. <http://www.bbc.com/news/world-asia-37021302>

² Gul, A. *Suicide Blast at Pakistani Hospital kills dozens*, VOA News, 9 August 2016. <http://www.voanews.com/a/hospital-bombing-quetta/3455236.html>

³ Ijaz, S. *Double Dealing and Carnage in Pakistan: The recent Quetta bombing underscores the failure that is Pakistan's ant-terrorism policy*, The Diplomat, 29 August 2016. <http://thediplomat.com/2016/08/double-dealing-and-carnage-in-pakistan/>

⁴ *Quetta Attack: Pakistan mourns as lawyers begin boycott*, Al Jazeera, 9 August 2016. <http://www.aljazeera.com/news/2016/08/quetta-attack-pakistan-mourns-lawyers-boycott-160809065837053.html>

⁵ *Quetta Attack: Lawyers to protest in front of Parliament*, The Express Tribune, 20 August 2016. <http://tribune.com.pk/story/1166269/quetta-attack-lawyers-protest-front-parliament/>

⁶ *Balochistan Lawyers decide to end boycott of courts*, The Dawn, 26 September 2016. <http://www.dawn.com/news/1286163>

⁷ Shah, A. *Judicial Commission formed to probe Quetta Civil Hospital Carnage*, The Dawn, 22 September 2016. <http://www.dawn.com/news/1285418/judicial-commission-formed-to-probe-quetta-civil-hospital-carnage>

⁸ *Quetta Civil Hospital Attack Commission displeased over lack of interest by government*, Geo News, 1 November 2016. <https://www.geo.tv/latest/119410-Quetta-Civil-Hospital-Attack-commission-displeased-over-lack-of-interest-by-government>

case, due to the fact that after 13 days the investigation was still incomplete.⁹ He also claimed that the Balochistan government was purposely attempting to damage court proceedings and attempting to hinder the inquiry. This latter statement was made after the Chief Minister announced the arrest of the ‘mastermind,’ while the Quetta Director of Investigation claimed no knowledge of the arrest.¹⁰ Judge Qazi Faez Issa responded: “The judicial commission will not allow the government to play politics. We will call the chief minister to appear before the commission to record his statement regarding the arrest of the man behind the attack.”¹¹

Statements¹² by Balochistan Police Chief, recently reported but not confirmed, indicate that: three of five suspects have been identified; the suspected mastermind (Jehangir Badini) and the suspected bomber (Ahmed Ali) were killed at the scene; one suspect has been detained for interrogation; and, a local group has claimed responsibility for the Quetta bombing.

LRWC calls on the Government of Pakistan to ensure effective investigations that result in the identification and punishment of all those responsible for planning and executing the assassination of Bilal Anwar Kasi and deaths of, and injuries, to all the lawyers, journalists and others killed and injured in the 8 August 2016 bombing at Sandeman Civil Hospital, in accordance with Pakistan’s international and domestic law obligations.

Pakistan’s International Law Obligations¹³

Pakistan must comply with its obligation under international human rights law. The murder of Bilal Anwar Kasi and the killing of an estimated 78 people at the Sandeman Civil Hospital, triggered Pakistan’s international legal obligations to ensure timely, independent and effective investigations, followed by prosecutions and trials of the suspects identified and punishment of perpetrators in accordance with law. As a member of the United Nations (UN), Pakistan has agreed to respect the rights to life guaranteed by the Universal Declaration of Human Rights (UDHR). As a party to the International Covenant on Civil and Political Rights (ICCPR) Pakistan has accepted the twin legal obligations to protect and ensure the right to life of all persons within its territory and to take effective measures to prevent, punish and remedy violations. The ICCPR imposes on Pakistan and other States Parties, the duty to investigate violations of the right to life as an integral part of the duty to protect the right to life guaranteed by Article 6.1. The duty to conduct effective investigations that result in the identification and punishment of those responsible for violations is a key component of the State duty to protect the right to life. The duty to conduct effective investigations that result in the identification and punishment of those responsible for violations is a necessary part of the State duty to protect the right to life. Failure to uphold this duty might require a State to appoint an independent inquiry of investigation. These twin duties of protection and effective remedy are affirmed by the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to

⁹ *Quetta Civil Hospital Attack commission displeased over lack of interest by government*, Geo News. 1 November 2016. <https://www.geo.tv/latest/119410-Quetta-Civil-Hospital-Attack-commission-displeased-over-lack-of-interest-by-government>

¹⁰ *Balochistan Govt hindering inquiry into Quetta Civil Hospital Attack*, The Dawn. 13 November 2016. <http://www.dawn.com/news/1296011/balochistan-govt-hindering-inquiry-into-quetta-civil-hospital-attack>

¹¹ *Balochistan Govt hindering inquiry into Quetta Civil Hospital Attack*, The Dawn. 22 November 2016. <http://www.dawn.com/news/1296011/balochistan-govt-hindering-inquiry-into-quetta-civil-hospital-attack>

¹² *Syed Ali Shah*, Mastermind of Quetta Civil Hospital carnage killed, says Sarfraz Bugti, *Dawn*, 4 December 2016.

¹³ The references in this section are taken from various LRWC publications on the Duty to Investigate that can be accessed here <http://www.lrwc.org/library/know-your-rights-index/duty-to-investigate-and-remedy/>

Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders)¹⁴, the Basic Principles on the Role of Lawyers (Basic Principles)¹⁵, and the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.¹⁶

The UN Human Rights Committee (HR Committee) has affirmed that the ICCPR Article 2.1 creates binding obligations on States to exercise due diligence to prevent, punish, investigate and redress violations of protected rights committed by State and/or private actors. Failure to take such measures can constitute violations by the State itself of the ICCPR. The HR Committee stated in General Comment 31:

There may be circumstances in which a failure to ensure Covenant rights as required by Article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.¹⁷

The HR Committee has noted that impunity may be “an important contributing element in the recurrence of . . . violations,” and has emphasized that the State obligation to provide an effective remedy pursuant to Article 2(3) of the ICCPR may in appropriate cases require guarantees of non-repetition and changes in relevant laws and practices.¹⁸ The UN has developed detailed standards for investigation of unlawful killing, including the:

- UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (UN Investigation Principles);¹⁹ and
- UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Minnesota Protocol).²⁰

The UN Investigation Principles, adopted by UN ECOSOC and welcomed by the UN General Assembly in 1989, reflect a global consensus on the standards for investigations that include:

¹⁴Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. Adopted at the 85th plenary meeting 9 December 1998 and adopted by the U.N. General Assembly 8 March 1999 A/RES/53/144. Article 9.5 specifically requires States to “conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred...

¹⁵ Adopted by the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana 27 August to 7 September 1990. U.N. Doc. A/CONF. 144/28/Rev. 1 at 188. (1990)

¹⁶ Adopted on 24 May 1989 by the Economic and Social Council Resolution 1989/65.

¹⁷ HR Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, para. 8

¹⁸ Ibid, paras 16, 18, available at: <http://www.refworld.org/docid/478b26ae2.html>.

¹⁹Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989, welcomed by the General Assembly in Resolution A/RES/44/159, 15 December 1989, see <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ArbitraryAndSummaryExecutions.aspx>.

²⁰ UN Department of Political Affairs, UN Manual on the Effective Prevention and Investigation of ExtraLegal, Arbitrary and Summary Executions, U.N. DOC. E/ST/CSDHA/12 (1991) (Minnesota Protocol). A revision of the Minnesota Protocol is currently underway in consultation with States, academia, civil society, and other interested parties. See UN Office of the High Commissioner for Human Rights, Revision of the Minnesota Protocol at:<http://www.ohchr.org/EN/Issues/Executions/Pages/RevisionoftheUNManualPreventionExtraLegalArbitrary.aspx>. See the draft revision at: <http://www.ohchr.org/Documents/Issues/Executions/UNManual2015/A.HRC.32.39.Add.4.docx>.

- thorough, prompt, and impartial investigation of all suspected cases of extra-legal, arbitrary, and summary executions;
- an independent commission of inquiry for those cases in which the established investigative procedures are ineffective because of lack of expertise or impartiality, and for cases in which there are complaints from the family of the victim about these inadequacies or other substantial reasons;
- protection from violence or intimidation for complainants, witnesses, families, and investigators;
- removal from power or control over complainants, witnesses, families or investigators of anyone potentially implicated in extra-legal, summary or arbitrary executions;
- access by families and their legal representatives to any hearing and to all relevant information, and the right to present other evidence;
- a detailed written report on the methods and findings of the investigation, made public within a reasonable time;
- government action to bring to justice persons identified by the investigation as having taken part in extra-legal, arbitrary and summary executions, through prosecutions and trials;
- responsibility of superiors, officers or other public officials for acts committed under their authority if they had a reasonable opportunity to prevent such acts; and
- fair and effective compensation for the families and dependants of victims of extra-legal, arbitrary and summary executions within a reasonable period of time

Minnesota Protocol: The Minnesota Protocol confirms that the purpose of an inquiry or investigation, as set out Subsection III (B), paragraph 9 is to discover the truth about the events leading to the suspicious death of a victim. To fulfil that purpose, those conducting the inquiry shall, at a minimum, seek to:

- (a) identify the victim;
- (b) recover and preserve evidentiary material related to the death to aid in any potential prosecution of those responsible;
- (c) identify possible witnesses and obtain statements from them concerning the death;
- (d) determine the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death;
- (e) distinguish between natural death, accidental death, suicide and homicide;
- (f) identify and apprehend the person(s) involved in the death;
- (g) bring the suspected perpetrator(s) before a competent court established by law.

Independent Commissions of Inquiry: The UN Investigation Principles require an independent commission of inquiry in cases where established investigative procedures are ineffective because of lack of expertise or impartiality, and in cases where there are complaints from the

family of the victim about these inadequacies or other substantial reasons. The Minnesota Protocol provides additional guidance, “[i]n cases where government involvement is suspected, an objective and impartial investigation may not be possible unless a special commission of inquiry is established. A commission of inquiry may also be necessary where the expertise of the investigators is called into question.”²¹

The Basic Principle on the Roles of Lawyers (welcomed in a consensus resolution of the UN General Assembly in 1990) requires all States to guarantee the right of equal access to justice by ensuring the independence and safety of lawyers and protecting them from interference by State authorities and other actors:

Article 12 (2) requires all States to protect lawyers in the practice of their profession.

Article 16 states that governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference

Article 17 states that where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by authorities.

The *Constitution of the Islamic Republic of Pakistan, 1973, As Amended by the Constitution Twentieth Amendment Act, 2012*, Article 9 provides, “No person shall be deprived of life or liberty save in accordance with law.”

Conclusion:

Pakistan is obliged by its domestic and international law obligations to ensure investigations of the unlawful killings of Bilal Anwar Kasi and each of the people who died as a result of the 8 August 2016 bombing attack, that result in determinations of the causes and particulars of each of the deaths, identification of the suspected perpetrators and the prosecution, trial and imposition of the punishment(s) required by law on those convicted of involvement. The investigations to date of the deaths of Bilal Anwar Kasi and all those killed in Sandeman Civil Hospital bomb attack on 8 August 2016, have been plagued by lack of public confidence and by demonstrations of incompetence. As a result of this inadequate investigation, Pakistan has a duty to appoint an independent commission of inquiry that complies with the international standards established by the UN Investigation Principles. Where the State is unable to appoint or ensure the operation of a Commission of Inquiry that is domestically and internationally trusted, the duty to investigate is neither abrogated nor abridged. In such a situation, it may be necessary for the Pakistan to seek the assistance of the UN. Through investigations, prosecutions, trials and punishment, the Government of Pakistan must ensure that justice is served for Bilal Anwar Kasi, **and** each of the people killed and injured in the 8 August 2016 bombing attack.

Recommendations:

LWRC calls on the Government of Pakistan to ensure:

1. Thorough, competent, impartial and effective investigations of the murders of Bilal Anwar Kasi and each of all those killed in the 8 August bombing attack;
2. The Judicial Commission of Inquiry formed to investigate the murder of Bilal Anwar Kasi and the Quetta bombing has the mandate, powers and resources to carry out its

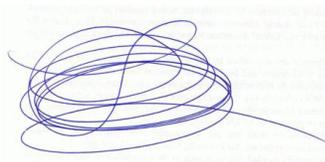
²¹ Ibid, Section D. Commissions of Inquiry

investigation in compliance with the UN Investigation Principles and the Minnesota Protocol and is protected from interference, hindrances or harassment from state and non-state actors;

3. Prosecutions and trials of the suspected perpetrators identified by the investigations;
4. Creation, in cooperation with the Human Rights Commission of Pakistan, Bar Associations and civil society, of a 'First Response Service' resourced to provide immediate protection to lawyers and other human rights defenders who may be in danger;
5. Compliance with all relevant provisions of the UDHR, ICCPR, Declaration on Human Rights Defenders, Basic Principles, UN Investigation Principles and the Minnesota Protocol.

Please advise LRWC of the actions that the Government of Pakistan is taking to remedy the murder of Bilal Anwar Kasi and the victims of the Quetta attack. LRWC awaits your response.

Sincerely,



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and

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